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# Some Aspects of the TRIPS Agreement: Copyright Enforcement and Dispute Settlement

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- I. The Enforcement of Copyright and Related Rights under the TRIPs Agreement
- II. The Dispute Settlement Procedure under the TRIPs Agreement

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# I. The Enforcement of Copyright and Related Rights under the TRIPs Agreement

by Professor David Vaver\*

## I: GENERAL

Before TRIPs, few provisions in international intellectual property (“IP”) treaties, including those covering copyright and related rights, required states to provide effective measures to enforce IP rights.<sup>1</sup>

A major feature of TRIPs is its requirement in Part III that WTO members include a specific minimum set of effective enforcement procedures for all categories of IP, including copyright (but not including moral rights).<sup>2</sup> Even developed states which have long been accustomed to enforcing IP rights may need to change their laws and practices to comply with TRIPs obligations; so it is not surprising that developing states also may have to make changes.

The general obligations that TRIPs imposes include, in broad detail, the following:

- Remedies to prevent and cure infringement must be expeditious and must be effective to deter further infringement (art. 41.1).
- Abuses of procedure and barriers to legitimate trade should be avoided (art.41.1).
- Due process must be guaranteed (arts. 41.2 - 41.4, & 42). In particular, there must be:
  - Fair procedures that are “not unnecessarily complicated or costly” and that do not impose “unreasonable time-limits or unwarranted delays”<sup>3</sup> Such procedures include:

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<sup>1</sup> See, e.g., Berne Convention on the Protection of Literary and Artistic Works (Paris, 1971), arts. 18 (seizure) & 33 (jurisdiction of International Court of Justice). Henceforth, “copyright” is used to cover both copyright (*droit d'auteur*) and related rights (*droits voisins*).

<sup>2</sup> TRIPs arts. 41.1 & 91. The enforcement obligations apply also to patents, plant variety rights, industrial designs, integrated circuit topography rights, trade marks, geographical indications, and confidential information (TRIPs arts. 41.1 & 1.2).

<sup>3</sup> The establishment of a special IP court is, however, unnecessary (art. 41.5).